

STATE OF VERMONT

SUPERIOR COURT
Windham Unit

CIVIL DIVISION
Docket No. 70-2-15

STATE OF VERMONT,)
)
 Plaintiff,)
)
 v.)
)
 HERMITAGE INN REAL ESTATE)
 HOLDING COMPANY, LLC;)
 RUSHING CREEK, LLC,)
)
 Defendants.)

CONSENT ORDER AND FINAL JUDGMENT ORDER

This action came before the Court pursuant to the parties' filing of a Stipulation for the Entry of Consent Order and Final Judgment Order. Based upon that Stipulation, and pursuant to 10 V.S.A. § 8221 and the Court's inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

ADJUDICATION FOR VIOLATIONS

1. Defendants Hermitage Inn Real Estate Holding Company, LLC and Rushing Creek, LLC are adjudged liable for the following violations of Vermont's land use and environmental laws and regulations at The Hermitage Club at Haystack Mountain, in Wilmington and Dover, Vermont:

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109 State Street
Montpelier, VT
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- a. violating 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) in Fall 2012 for constructing a 1.25 mile snowmobile trail without an Act 250 permit (Count One of the Complaint);
- b. violating 10 V.S.A. § 8002(9) in Fall 2012 for removing trees and vegetation within buffer zones in contravention of applicable Act 250 permit conditions (Count Two of the Complaint);
- c. violating 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) in Fall 2012 for installing a ski patrol and bathroom building without an Act 250 permit (Count Three of the Complaint);
- d. violating 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) in Fall 2011 for constructing trails and stream crossings without an Act 250 permit (Count Four of the Complaint);
- e. violating 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) in Fall 2012 for performing blasting work for a wind turbine without an Act 250 permit (Count Five of the Complaint);
- f. violating 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) in June 2014 for constructing a dock, raft, fence, and beach area at Mirror Lake without an Act 250 permit (Count Six of the Complaint);
- g. violating 10 V.S.A. § 8002(9) in Fall 2011 for removing trees and vegetation within buffer zones in contravention of applicable Act 250 permit conditions (Count Eight of the Complaint);

- h. violating 10 V.S.A. Chapter 47 in Fall 2012 for construction without a Moderate Risk stormwater general permit (Count Nine of the Complaint);
- i. violating 10 V.S.A. § 8002(9) in December 2012-January 2013 for construction activities in contravention of applicable stormwater permit conditions (Count Ten of the Complaint);
- j. violating 10 V.S.A. § 1259(a) in November-December 2012 for discharging sediment and runoff into state waters without a permit from the Secretary of the Agency of Natural Resources (Count Eleven of the Complaint);
- k. violating 10 V.S.A. § 1973 in Fall 2012 for connecting a ski patrol and bathroom building to sewer lines without a wastewater and potable water supply permit (Count Twelve of the Complaint);
- l. violating 10 V.S.A. § 1673 in Fall 2012 for connecting a ski patrol and bathroom building to public water lines without a public water supply permit (Count Thirteen of the Complaint);
- m. violating 10 V.S.A. § 1082 in June 2014 by constructing a beach area at Mirror Lake without authorization from the Secretary of the Agency of Natural Resources to alter a dam or spillway (Count Fourteen of the Complaint); and
- n. violating 10 V.S.A. § 913 and Vermont Wetland Rule 9.1 in Fall 2012 for removing trees and vegetation within a wetland without a permit or

authorization from the Secretary of the Agency of Natural Resources
(Count Fifteen of the Complaint).

2. This Consent Order and Final Judgment Order resolves all claims in the State's Complaint in this matter. Any violations alleged by the State in the Complaint for which Defendants have not been adjudicated liable in this Consent Order and Final Judgment Order are dismissed with prejudice. This Consent Order and Final Judgment Order does not affect any potential violations by Defendants at The Hermitage Club not alleged in the Complaint.

PENALTIES

3. For the violations described above, Defendants shall pay a civil penalty of two hundred and five thousand U.S. dollars (\$205,000.00).
4. Payment of the \$205,000.00 penalty shall be made as follows: \$55,000.00 shall be paid within seven (7) days after entry of this Consent Order and Final Judgment Order, and \$25,000.00 shall be paid on or before the first day of every month for six months for the remaining \$150,000.00, beginning with the first month after entry of this Consent Order and Final Judgment Order. All payments shall be by check payable to the "State of Vermont" and sent to: Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609. In the event that payment is received by the State before the Court has approved the Consent Order and Final Judgment Order, the State shall hold the

check(s) in trust until approval. Should the Court reject the Consent Order and Final Judgment Order, the State will return the check(s) to Defendants.

5. In the event that Defendants fail to pay the penalty described in paragraphs 3 and 4, such failure shall constitute a breach of this Consent Order and Final Judgment Order and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum. Defendants shall also be liable for costs incurred by the State, including reasonable attorney's fees, to collect any unpaid penalty amount.

OTHER PROVISIONS

6. Defendants waive: (a) all rights to contest or appeal this Consent Order and Final Judgment Order; and (b) all rights to contest the obligations imposed upon Defendants under this Consent Order and Final Judgment Order in this or any other administrative or judicial proceeding involving the State of Vermont.
7. This Consent Order and Final Judgment Order is binding upon the parties and all their successors and assigns.
8. Nothing in this Consent Order and Final Judgment Order shall be construed to create or deny any rights in, grant or deny any cause of action to, or release any claim from, any person not a party to this Consent Order and Final Judgment Order, including any third party or any other government or sovereign.

9. This Consent Order and Final Judgment Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, the Consent Order and Final Judgment Order shall be final.

10. Any violation of this Consent Order and Final Judgment Order shall be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt, as set forth in 10 V.S.A. Chapters 201 and 211.

11. Nothing in this Consent Order and Final Judgment Order shall be construed as having relieved, modified, or in any manner affected Defendants' obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to Defendants.

12. This Consent Order and Final Judgment Order may only be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and approved by this Court. Any representations not set forth in this Consent Order and Final Judgment Order, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.

13. The Superior Court of the State of Vermont, Windham Unit, shall have jurisdiction over this Consent Order and Final Judgment Order and the parties hereto for the purpose of enabling any of the parties hereto to

apply to this Court at any time for orders and directions as may be necessary or appropriate to carry out or construe the Orders, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions. The laws of the State of Vermont shall govern the Orders.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED at Windham, Vermont this ____ day of _____, 2015.

Hon. John Wesley
Windham Superior Court Judge

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